IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No. 11145 of 2004
With
CRIMINAL MISC.APPLICATION No. 11146 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE P.B.MAJMUDAR

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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M/S. KUBER ROLLING MILL PRIVATE LIMITED AND OTHERS
Versus
THE STATE OF GUJARAT AND ANOTHER

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Appearance :
MR MEHUL SHARAD SHAH for Applicants.
MS MANISHA SHAH, APP for Respondent No. 1.
MR UTPAL M PANCHAL for Respondent No. 2.

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CORAM : HONOURABLE MR.JUSTICE P.B.MAJMUDAR

Date : 06/12/2005

ORAL ORDER

Rule. In both these applications, Ms.Manisha Shah, learned APP

waives service of notice of rule on behalf of respondent No.1 and Mr.Utpal Panchal, learned advocate waives service of notice of rule on behalf of respondent No.2. With the consent of the parties, both the matters are taken up for hearing today.

Instead of approaching Civil Court for getting appropriate money decree, the complainant has rushed before the Criminal Court by filing these complaints. The tendency of filing criminal cases in the matter of a civil nature is increasing day-by-day, perhaps with a view to see that the complainant may get quick result of his case.

So far as Criminal Misc. Application No.11145 of 2004 is concerned, the respondent No.2 has filed the said complaint against the applicants, i.e., a limited company and its directors under Sections 406, 420, 323, 504, 506 (1) and 114 of Indian Penal Code. The aforesaid complaint is filed before the Judicial Magistrate, First Class, Surat as Criminal Case No.1595 of 2003. As per the allegations made in the complaint, the applicants No.2 and 3 have represented to respondent No.2 that if the coal is sold to them, the payment will be made as per the prevailing commercial practice and if there is any delay in payment they will pay him 3% interest every month on such delayed payment. As per the averment made in paragraph 2 of the complaint, an amount of Rs. 37,083/- is outstanding from the accused and despite the demand it has not been paid. It is also averred in paragraph 3 of the complaint that the complainant sent his manager at the office of the accused for recovering the aforesaid amount but the manager was subjected to threat and was warned not to enter the office of the accused again otherwise he will face serious consequences. The complainant, thereafter, gave notice

dated 31st March, 2003 through his advocate for demanding the aforesaid amount. However, the said notice has not been replied nor any payment is made by the accused. Under these circumstances, aforesaid complaint is filed by invoking provisions of Indian Penal Code as narrated herein above. Learned Judicial Magistrate, First Class, Surat, thereafter issued process under Sections 406, 420, 323, 504, 506 (1) and 114 of Indian Penal Code. Therefore, the applicants have filed Criminal Misc. Application No.11145/2004 challenging the order passed by the Magistrate issuing process under the aforesaid complaint.

The complainant thereafter filed another complaint on identical averments except the amount, which was mentioned as Rs.48,487/-. The said complaint was registered as Criminal Case No.1596 of 2003 before the learned Judicial Magistrate, First Class, Surat. Both the complaints are verbatim except the outstanding amount which is shown to be different. Learned Magistrate also issued process in second complaint. Therefore, the applicants have filed Criminal Misc. Application No.11146 of 2004 challenging the process issued by the learned Magistrate with regard to the second complaint.

As stated earlier, both the complaints are similar in nature and allegations made therein are also identical, not only that, the parties are also same in both the complaint and, therefore, both these applications are taken up for final hearing together.

On reading both the complaints, it is clear that the complaints are filed only in order to recover outstanding dues of the complainant. The complainant instead of drafting a plaint has filed aforesaid complaints

before the learned Magistrate by changing its nomenclature from Civil Suit to Criminal Case. Nowhere in the aforesaid complaints, the complainant has stated as to on which date the incident in connection with ill-treatment to his manager had taken place. Even nothing is stated as to on which date the manager of the complainant went to the office of the accused for the purpose of demanding money. The dispute in question is nothing but a dispute regarding non-payment of dues of the complainant, which can be said to be the dues of an unpaid seller. The complainant, therefore, after affixing appropriate Court fee stamp, as required by law, should have filed money suit for obtaining money decree instead of that the complainant has rushed to the criminal Court. In a given case, both civil and criminal proceedings may arise from a particular transaction but in the instant case, there is no scope for both the proceedings. This is not a case where any post-dated cheques are given by the accused which have bounced back nor any security is given by the accused. It is purely a simple money transaction between a seller and purchaser and no provision of Indian Penal Code can be said to have been attracted in the present case. Under these circumstances, both the complaints are required to be quashed as filing of such complaints, in my view, is nothing but abuse of process of criminal law, as ultimately in the guise of a complaint, the complainant has tried to bring a money suit before the Criminal Court.

At this stage, Mr.Shah, learned advocate for the applicants submitted that the applicants have already made the payment of outstanding amount for which he has relied upon the abstract of accounts, which is at page Nos.15 and 16 of the compilation. It is submitted by Mr.Shah that since the applicants have stopped purchasing

the goods from the complainant, aforesaid complaints have been filed with a view to harass the applicants. However, in my view, it is not necessary to examine this aspect at this stage, as the defence of the accused cannot be taken into consideration in the proceedings for quashing the complaints.

In view of what is stated herein above, both these complaints are required to be quashed, as in my view, if such complaints are entertained, the Criminal Courts will have to try all sorts of money suits. It is rightly submitted by Mr.Shah that such type of complaints are filed only in order to see that the dispute is settled by compelling the accused to make payment. He, however, submitted that in the instant case no amount is outstanding, therefore, there is no question of even settling the dispute with the original complainant. On this submission also, this Court is not required to express any opinion, because if any further proceedings are undertaken by the complainant in civil forum, observations made in this order may affect the case of the complainant.

As stated earlier, in order to see that the complainant can make out some case before the criminal Court, some vague averments are made about ill-treatment to the manager of the complainant but no particulars are given as to on which date the said incident has happened. Therefore, filing of such complaints is nothing but abuse of process of law. In my view, the complainant should have got his right adjudicated through civil forum by getting money decree instead of filing such criminal complaints. It is very unfortunate that even in a simple money transaction instead of filing suit, criminal cases are filed.

Mr.Panchal, learned advocate for the original complainant is not in a position to justify the action of the complainant nor he is in a position to point out as to which provision of Indian Penal Code can be said to have been attracted in the instant case. The allegations made in the complaint about so-called ill-treatment is made only with a view to bring into picture the aspect of criminality but there also no particulars are given, nor there is anything to suggest that the manager has filed any complaint in this regard.

On behalf of the applicants' reliance is placed on the decision of the learned Single Judge of this Court rendered in Criminal Misc. Application No. 5165 of 1997 on 25-3-1998. In the aforesaid case, a complaint was flied under Sections 406, 420 read with Section 114 of I.P.C. for non-payment of dues of the complainant. The learned Single Judge found that on reading the complaint it does not prima facie show that there was entrustment of the property and, therefore, no offence under Section 406 can be said to have been made out and ingredients under Section 420 are also not established. In the aforesaid case, learned Single Judge has observed as under :

> "The Honourable Supreme Court, in the case of M/s.Pepsi Foods Limited and another vs. Special Judicial Magistrate and others, reported in JT 1997 (8) S.C. 705, has held that, if the complaint does not establish ingredients of offence, which is alleged against the original accused, the court should quash the complaint and should not direct the accused persons to approach the learned Magistrate. It is further held that summoning of an accused in a criminal case is a serious matter; Criminal law cannot be set into motion as a matter of course; The Magistrate, while issuing process, should not be a silent spectator and should not issue process mechanically. In the present case, as stated above, the complaint does not show, prima facie,

> ingredients of Sections 406, 420 read with section 114 of the Indian Penal Code. Therefore, in my opinion, the complaint requires to be quashed. It must be stated that the complainant has also not averred in the complaint that the petitioners Nos. 1 to 3 were responsible for the business and management of the Dairy. There is not a whisper against them as to how they were responsible for commission of alleged offences, and what part they have taken in commission of the said offence."

In my view, in the instant case, the complainant has tried to adopt short-circuit formula to get back his money in connection with the transaction in question by filing criminal cases and filing of such complaints, therefore, is nothing but abuse of process of law. Considering the aforesaid aspect of the matter, these applications are allowed. Both the complaints as well as orders passed by the learned Magistrate in Criminal Case No.1595 of 2003 and Criminal Case No.1596 of 2003 are quashed and set aside. Rule is made absolute.

(P.B.MAJMUDAR, J.)

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